* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **R.A.NO.294/2005 & CM No.13132/05 IN WP(C) NO.7724/2002**

Reserved on: March 23, 2007
Date of decision : May 24, 2007

MOHD. MURSALEEN ..... Petitioner
Through Ms. Rama Parween Siddiqui, Advocate

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Ms. Sangeeta Chandra, Advocate.

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

% Mr. Justice S. Ravindra Bhat :

1. These proceedings seek review of the judgment and order of this Court dated 9.5.2005.
2. The writ petitioner had challenged a demand issued by the DDA (hereinafter "DDA") on 20.11.2002 and also sought for directions to restore his lease-hold rights and convert them into freehold. He had purchased a 375 sq.mtr. plot (hereafter called the "property") on perpetual lease hold basis. The lease deed was executed on 30.1.1979. He completed construction on the plot an occupation certificate was issued on 20.12.1986. According to his case a portion of the premises being basement was let

out on 9.3.1990. The purposes of tenancy was storage of finished furniture; the duration of the arrangement was 17 months. It was alleged that the tenant misused the premises. The writ petitioner terminated the arrangement and filed a suit for possession in this Court, in 1992. He also took further action and disconnected electricity supply to the premises on 23.7.1993. Apparently, the writ petitioner had intimated the DDA and the Zonal Assistant Commissioner which led to filing of complaint under Section 29(2) of the Delhi Development Act. That alleged commission of the offence, on 9.11.1992. The tenant i.e T.H. Naqvi was convicted on 26.4.1996. After a great deal of effort the writ petitioner/lessee obtained possession of the premises on 20.4.2000. He also faced further proceedings by the tenant, who filed an injunction suit impleading him as the defendant.

3. After all the events the writ petitioner sought for conversion of the property into freehold when he was informed that the lease had been cancelled. The DDA expressed willingness to restore the lease upon payment by him of the sum of Rs.27,000/-. After payment of the restoration charges, on 1st May, 2001, the DDA demanded "misuse" charges, for the sum of Rs.15,87,480/-. Despite his entreaties, the DDA insisted that the amount ought to be paid as a condition for conversion of the property. That action was impugned.

4. The DDA filed a counter affidavit to the writ petition on 19.8.2003. It did not dispute or specifically deny the case set up by the petitioner about filing of proceedings by him, to evict his tenant as well as other legal proceedings in that connection. It also admitted that at the writ petitioner's request the Enforcements Branch of DDA had

lodged a complaint, under Section 29(2) of the Delhi Development Act which culminated for the conviction of the tenant, (who was found to have misused the premises), on 24.6.1996. It did not disclose as to the existence of any other document or advert to any circumstance which preceded the misuse alleged against the property in 1991-92.

5. The review petition is premised mainly on the ground that when the writ petition was heard, the DDA went unrepresented and could not present its point of view. Besides applying for condonation of delay of 111 days in filing the review, the DDA has placed reliance on copies of notices dated 20.10.1986, 6.4.1987, 12.4.1989 and 11.11.1991 to submit that the premises were misused even before the incident in question.

6. Ms. Sangeeta Chandra, learned counsel relied upon the notices and particularly the one dated 20.10.1986 to submit that for this five years period, the petitioner was guilty of misusing the premises and not disclose the facts to the Court. Learned counsel contended that omission to bring these facts to the notice of the Court at the time of hearing, occasioned prejudice and failure to justice and, therefore, the Court should review the order and hear the petition again on merits.

7. The writ petitioner denied the allegations in the review petition. The review petition was resisted on the ground of delay. It was contended that the review petition has sought to introduce the materials which were not only untrue but were never part of the record and in any case could have been included in the counter affidavit. The DDA consciously decided to refrain from adverting to those facts. Therefore, inclusion of

such facts is not permissible. It was also contended that the entire case about the show cause notices alleging misuse was untrue. According to the writ petitioner the show cause notice dated 20.10.1986 regarding use of the basement for a venture called "Fun and Frolic" was discontinued, even before end of the notice period. The garage in question had been used for storing some goods of the petitioner's relative and that such use had been discontinued immediately. It was contended that the terms of tenancy with Mr. T.H. Naqvi were a matter of record and contained in an agreement dated 9.3.1990. The premises were misused by that tenant. This caused considerable hardship to the writ petitioner who had to fight for about a decade to evict that tenant. Instead of seeing these facts, the DDA was trying to inject life into issues that had been discarded long ago and in any case were not relevant.

8. This Court in the judgment proceeded to hold as follows :

> "7. *In support of the averments, the petitioner has relied upon copies of the complaints written to the DDA and the police intimating them about unauthorized use of the premises and seeking action; the complaints also rely on copies of the order in the injunction suit and the orders passed in the eviction proceedings etc.*
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> *8. The DDA in its reply has not disputed the facts relating to the history of the proceedings eventually culminating in the vacation of premises after the tenant had been prosecuted and found guilty. It has, however, stated that since there was misuse, the petitioner had to pay the charges. The representation of the petitioner for waiver of those charges was declined and it is averred that the petitioner was requested to deposit the amounts.*
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> *9. Learned counsel for the petitioner submits that the impugned demand by the DDA is arbitrary and unreasonable. He states that no fault could be attributed*

> *to the petitioner. He merely let out the premises, via basement, for storage purposes, which was permissible. He has relied upon conditions in the rent agreement, which stipulated that the tenancy was to cease if the DDA or any other authority commenced any action against the tenant. A condition in the tenancy agreement was that vacant possession had to hand over possession upon the expiration of its term. His tenant however misused the property by using it as a shop. The petitioner had to spend considerable effort, and fight three litigations with the tenant. Ultimately, he secured vacant possession after being forced to settle with the tenant. The DDA itself prosecuted the tenant, which resulted in conviction. It was never the case of DDA that the petitioner was culpable or guilty of misuse. In the light of these facts, it is submitted, that the DDA's action is unreasonable. Hence, it could not claim that the petitioner was guilty of misuse and raise astronomical demands as misuse charges."*

9. The above discussion would show that the writ petition was disposed of on the basis of rival pleadings as is evident from the above discussion as also from Paras 11 to 13 of the judgment sought to be reviewed. The DDA had not mentioned anything about misuse prior to the period 1991-1992 by the writ petitioner. That might have been on the basis of a conscious decision not to do so or it may be by inadvertence. Whatever be the reason, the DDA had the relevant materials (which it bases for re-opening of the decision of the Court), with it when the counter affidavit was filed. Having elected not to use it, in my opinion it is not open for me to rely upon those documents. In any case, nothing has been shown or adverted to in these proceedings indicative of the DDA's contemporaneous thinking that period i.e 1986-90 of the lease had to be determined. It is not its case that the 11.11.1991 order determining the sub-lease was ever communicated; much less acted upon. On the contrary possession of the premises

continued with the writ petitioner. He filed a suit for eviction and eventually secured possession in 2000. In the meanwhile, at his behest, the DDA prosecuted the tenant. Had the DDA felt that the writ petitioner too was guilty of the misuse, it could have prosecuted him. That option too was not exercised. In these circumstances, the stand sought to be projected after a lapse of such a length of time that misuse of the premises started prior to 1990 and that the writ petitioner ought to pay misuse charges, is utterly unwarranted and in any case unjustified.

10. In view of the above reasons, no ground for reviewing the judgment of this Court dated 9.5.2005 has been made out. The review petition and CM No.13132/2005 are hereby dismissed without any order as to costs.

May 24, 2007 (S. RAVINDRA BHAT)
MLB JUDGE